IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 636 of 2006

Date of decision: 27.4.2007

Kailash Chand ..Petitioner

Versus

Union of India & others ….Respondents

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. Justice Surinder Singh, Judge

Whether approved for reporting?

For the Petitioner: Mr. Ajay Sharma, Advocate.

For Respondents : Mr. Ravinder Thakur,
Central Govt. Counsel.

Per Deepak Gupta, J (Oral)

This writ petition has been filed by the petitioner claiming the following relief :-

> "Respondents may very kindly be directed to decide the appeal of the petitioner already pending with them and if decided against the petitioner, directions may be issued to produce the same on the record and after production of the same, the orders as passed on appeal may very kindly be quashed and set aside and also Annexure P-2 dated 3.11.2004 with further directions to the respondents to start paying the disability pension to the petitioner from the date when it was stopped."

The facts, which stand admitted in the case are that the petitioner was discharged from service on 31.8.1980. He was found to be suffering from Pulmonary Tuberculosis, which was attributable to army service. Initially his disability was accessed at 40 percent

and he was accordingly granted disability pension. In the year 1995 when the petitioner appeared before the Re-survey Medical Board his disability was assessed less than 20% and the disability pension payable to the petitioner was discontinued. In 1998, the Record Officer of the Dogra Regiment, to which the petitioner belongs, recommended the case of the petitioner for grant of disability pension for life on the ground that the petitioner had been re-assessed at 40 percent disability after a period of 10 years. Though it is not clear from when the period of 10 years was counted but it appears that this period is reckoned from the date of his discharge. This recommendation made by the Record Officer was rejected by the CCDA(P) Allahabad vide its communication dated 3rd June, 1998 on the ground that he has been again reassessed having disability of between 11 to 14 percent i.e. less than 20% for the period from 28.1.1998 to 8.1.2003.

The petitioner filed an appeal before the appellate authority. This appeal is still pending. Respondents in the reply have stated that the appeal could not be decided since the petitioner despite repeated communication has not appeared before the Re-survey Medical Board.

From the facts mentioned above and the other material on record, it is obvious that right from 1995 the disability of the petitioner has been assessed at less than 20 percent. The petitioner will be entitled to disability pension, only in case his disability is assessed at more than 20 percent. This disability has to be assessed by the Medical Board and cannot be assessed by this Court. The respondents are justified in asking the petitioner to appear before the Re-survey Medical Board.

We, therefore, dispose of this writ petition with the direction that the petitioner shall appear before the Re-survey Medical Board. The respondents are directed to send a registered letter to the petitioner within 8 weeks from today intimating him the date on which he should appear before the Re-survey Medical Board at Delhi. In case the petitioner does not appear before the Re-survey Medical Board, respondents shall not be bound to consider his appeal.

(Deepak Gupta), J.

April 27, 2007 (Surinder Singh), J.
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